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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,488	09/21/2004	Eric J. Hansen	71189-1653	5487
20915	7590	06/06/2005	EXAMINER	
MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/711,488

Applicant(s)

HANSEN ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-31 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/21/2002.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

I- Species A: Figs. 1-3.

II- Species B: Figs. 4-9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with the applicants' attorney Mr. John E. McGarry on 6/1/2005 a provisional election was made with traverse to prosecute the invention of Species B: Figs. 4-9, claims 1-31. Affirmation of this election must be made by applicant in replying to this Office action.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,6-13,20-21,23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy et al. 3,236,457.

Kennedy et al. disclose an aerosol package for simultaneously dispensing two different fluids from separate chambers (col. 1, ll: 6-35), which comprises a first container (56) having a first fluid therein under pressure and having a first dispensing

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outlet (31) controlled by a first valve (41), a second container (56), in fixed abutting relationship to the first container, having therein under pressure a second fluid, different from the first fluid, and having a second dispensing outlet controlled by a second valve (col. 3, ll. 42-46), a dispenser (63) having a dispensing orifice (69) fluidly connected to each of the first and second dispensing outlets, an actuator (71) connected to each of the first and second valves for simultaneously opening each of the first and second valves to simultaneously dispense fluids from the first and second containers (col. 3, ll. 69-75 onto col. 4, ll. 1-3), wherein the dispensing orifice is positioned at one side of the first container distal from the second container as seen in Figure 8, a dispensing tube (57) with a channel between the first and second dispensing outlets and the dispensing orifice, a handle (62).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. 3,236,457 in view of Markey et al. 6,082,588.

Kennedy et al. have taught all the features of the claimed invention except that the two containers are joined together with an adhesive. Markey et al. teaches the use of two containers (12,14), where the two containers are joined together with an adhesive (col. 4, ll. 40-45).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of Markey et al. onto the containers of Kennedy et al., in order to connect/secure/join the two containers together.

8. Claims 4-5,15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. 3,236,457 in view of Marrelli et al. 5,779,035.

Kennedy et al. have taught all the features of the claimed invention except that the two containers are joined together with a thin film that is wrapped around them. Marrelli et al. teach the use of a transparent thin film (327), where the thin film is wrapped around a few containers (310).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the thin film of Marrelli et al. around the containers of Kennedy et al. in order to hold the containers together with a wrapping material.

9. Claims 17-19,27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. 3,236,457 in view of Reed et al. 4,449,647.

Kennedy et al. have taught all the features of the claimed invention except that the dispenser comprises a lock for selectively preventing the actuator from operating. Reed et al. teach the use of a dispenser (10) having a lock (55), where the lock is selectively preventing the actuator (36) from operating (col. 3, ll. 27-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lock of Reed et al. below the actuator of Kennedy et al. as taught by Reed et al. in (col. 3, ll. 27-46), in order to prevent accidental or premature depression of the trigger.

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10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. 3,236,457 in view of Breslau et al. 3,303,970.

Kennedy et al. have taught all the features of the claimed invention except that the first and second containers are snap-fit into the dispenser. Breslau et al. teach the use of a dispenser (1) having two containers (5,5a), where the two containers are snap-fit into the dispenser (col. 2, ll. 61-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of Breslau et al. onto the dispenser of Kennedy et al., in order to provide an alternate means of attaching the dispenser onto the containers, as taught by Breslau et al. in (col. 2, ll. 61-65).

11. Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. 3,236,457 in view of Abplanalp 6,062,493.

Kennedy et al. have taught all the features of the claimed invention except that elongated filler is within the dispensing tube. Abplanalp teaches the use of a dispensing tube (13) having an elongated filler (30), the filler having a plug (33) in the dispensing orifice (38) to assist mixing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Abplanalp's filler (30) within the dispensing tube of Kennedy et al., in order to dispense the mixed products as a spray, as taught by Abplanalp in (col. 4, ll. 2-6).

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**Conclusion**


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown 5,924,599, Jimbo et al. 6,834,778, Murray et al. 4,880,143, Baudin 6,257,503, Abplanalp 6,254,015, Abplanalp 4,396,152, Riccio 4,061,252, Marand 3,389,837, Riccio 3,921,857, Conway et al. 6,758,411, deLarosiere 4,416,373 and Mednis 4,570,799 disclose other types of aerosol packages.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571)-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
June 1, 2005

 6/1/05  
Frederick C. Nicolas  
Patent Examiner  
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